

Pursuant to FED. R. CIV. P. 78, no oral argument was heard. After carefully considering the submissions of the parties, and based upon the following, Plaintiff's Motion for Leave to File a Renewed Motion to Transfer is **denied**, and Plaintiff's Motion for Default Judgment against the Passaic County Jail, the Passaic County Warden, and Unknown Correctional Officers is **denied**. Defendant Carter and the OFPD's motion to dismiss Plaintiff's Amended Complaint is **granted**.

BACKGROUND

This Court previously discussed the allegations in Plaintiff's Complaint in Abuhouran v. Fletcher Allen Healthcare, 2009 U.S. Dist. LEXIS 54182 (D.N.J. June 25, 2009). These allegations are not recited at length here.

On or about October 24, 2007, *pro se* plaintiff, Aktham Abuhouran, filed a Complaint against a number of defendants, including Peter M. Carter, Esq., the OFPD, the Passaic County Jail, the Passaic County Warden, Unknown Correctional Officers, Fletcher Allen Health Care, Inc., Dr. Michael A. Horgan, David Nathan, Dr. Timothy Link and the University of Vermont (collectively "Defendants"). In an Opinion and Order dated June 25, 2009, this Court granted Defendants' motion to dismiss Plaintiff's Complaint, and denied his motion for leave to amend the Complaint.

On October 28, 2009, Plaintiff filed a "Motion for Leave to File Renewed Motion to Transfer." On October 29, 2009, Plaintiff also filed a "Motion for Default Judgment against the Passaic County Jail, the Passaic County Warden, and Unknown Correctional Officers." On March 25, 2010, Defendant Carter and the OFPD filed a motion to dismiss Plaintiff's Amended Complaint. The three motions are currently pending before this Court, and will be considered in turn.

DISCUSSION

A. Plaintiff's Motion for Leave to File a Renewed Motion to Transfer

In Plaintiff's motion of October 28, 2009, he asks that this Court grant him leave to file a motion to transfer this action to Vermont, where several of the named Defendants work and/or reside. Specifically, Plaintiff asks that the case be transferred with respect to "Defendants Fletcher Allen Health Care, Inc., Dr. Michael A. Horgan, and Dr. Timothy Link, David Nathan and the University of Vermont." This action, however, was dismissed as to Fletcher Allen Health Care, Inc.,

Dr. Michael A. Horgan, Dr. Timothy Link and the University of Vermont in this Court's Opinion and Order dated June 25, 2009.¹ Accordingly, Plaintiff's motion is denied as moot.

B. Plaintiff's Motion for Default Judgment against the Passaic County Jail, the Passaic County Warden, and Unknown Correctional Officers

On October 29, 2009, Plaintiff moved for default judgment against the Passaic County Jail, the Passaic County Warden and Unknown Correctional Officers. Plaintiff asserts that these Defendants failed to timely respond to his Complaint, which was served on November 21, 2008. As the docket sheet indicates, however, on January 22, 2009, an Answer was filed on behalf of the Passaic County Jail, the Passaic County Warden and Unknown Correctional Officers. See Docket Entry No. 31. The attached Certificate of Service indicates that these Defendants served their Answer upon Plaintiff via regular mail at 522 Central Avenue, Apt. #3, Jersey City, N.J. 07307.² This was the address listed by Plaintiff in a correspondence to the Court only ten (10) days prior to the date Defendants served their Answer. See Docket Entry No. 25. Accordingly, the Court finds that Defendants timely answered the Complaint, and properly served it upon Plaintiff at his last known address.

Plaintiff's motion for default judgment is, therefore, denied.

¹ Defendant David Nathan was never properly served with the Complaint in this action. See Docket Entry No. 12 (noting that the process server was unable to locate Dr. David Nathan, as Nathan left Fletcher Allen Health Care several years earlier, and did not leave a forwarding address); see also See Francis v. Joint Force Headquarters, 2006 U.S. Dist. LEXIS 72738, at *11-15 (D.N.J. Oct. 4, 2006) (noting that a *pro se* litigant failed to properly serve a defendant where he simply mailed the summons and complaint to the defendant's workplace without providing evidence that the defendant received either; explaining, further, that the "burden of establishing excusable neglect for failure to effect service is upon the appellant, even one proceeding *pro se*") (citations omitted).

² The Answer was also filed electronically through the Court's ECF System.

C. Defendant Carter and the OFPD's Motion to Dismiss Plaintiff's Amended Complaint

On March 10, 2010, Plaintiff filed an Amended Complaint in this action. Therein, Plaintiff asserts that Defendant Carter and the OFPD violated his civil rights in their capacity as his legal counsel. The Court directly dealt with a number of such claims in its Opinion and Order dated June 25, 2009, and found that Plaintiff failed to "state valid causes of action against the Carter Defendants for constitutional violations." At that time, this Court explicitly rejected Plaintiff's request to amend his Complaint to add additional claims against Defendant Carter and the OFPD. Nonetheless, Plaintiff filed an Amended Complaint asserting such claims.

The Court will not reconsider Plaintiff's claims that were previously dismissed with prejudice, and any new claims in Plaintiff's impermissibly filed Amended Complaint are dismissed as well. Accordingly, Defendant Carter and the OFPD's motion to dismiss is granted.

CONCLUSION

For the reasons stated, Plaintiff's Motion for Leave to File a Renewed Motion to Transfer is **denied**; Plaintiff's Motion for Default Judgment against the Passaic County Jail, the Passaic County Warden, and Unknown Correctional Officers is **denied**; Defendant Carter and the OFPD's motion to dismiss Plaintiff's Amended Complaint is **granted**.

S/ Dennis M. Cavanaugh

Dennis M. Cavanaugh, U.S.D.J.

Date: April 26, 2010
Original: Clerk's Office
cc: All Counsel of Record
The Honorable Mark Falk, U.S.M.J.
File